Volume 65 | Issue 1 Article 16

December 1962

Labor Law--Norris-LaGuardia Act--Power of Federal Court to Enjoin Breach of No Strike Clause

James Kilgore Edmundson Jr.
West Virginia University College of Law

that if the transferor-court does not have service of process over the defendant and the defendant is not amenable to service of process in the transferee-district, even though venue is proper in both districts, the transferor-court could not transfer the action because both courts lack personal jurisdiction over the defendant, unless he submits thereto. Certainly if the transferor-court does not have jurisdiction over the defendant's person, the transferee-court could not obtain jurisdiction by the act of transfer alone. *Wilson v. Kansas City So. Ry.*, 101 F. Supp, 56 (W.D. Mo. 1951); *Scarmardo v. Mooring,* 89 F. Supp. 936 (S.D. Tex. 1950)

The decision in the principal case has clarified the interpretation of the statute and has set out a rule to be followed in the future. Since personal jurisdiction is not prerequisite to transfer, the use of the section will be expanded to situations where the plaintiff, acting in good faith, mistakenly believes the defendant to be a resident of the transferor-district. This will enable the federal courts to more swiftly and easily adjudicate cases to the best interests of the parties concerned.

Frank Thomas Graff, Jr.

Labor Law—Norris-LaGuardia Act—Power of Federal Court to Enjoin Breach of No Strike Clause

An employer and union agreed to arbitrate all grievances concerning wages, hours, and other conditions of employment. The union also promised to engage in no strikes or work stoppages. However, on nine different occasions during a period of nineteen months, production was in fact interrupted by labor strife. The employer sought injunctive relief, but both the district and circuit court dismissed the complaint. On appeal to the United States Supreme Court in a five to three decision, *held,* affirmed. The Norris-LaGuardia Act, 29 U.S.C. § 101 (1958) proscribes injunctive relief against concerted activities arising out of labor disputes. *Sinclair Ref. Co. v. Atkinson,* 370 U.S. 238 (1962).

In construing § 301 (a) of the Labor Management Relations Act, 29 U.S.C. § 185 (a) (1958), the United States Supreme Court decided that Congress intended federal substantive law fashioned from national labor policy to apply in labor disputes. *Textile Workers of America v. Lincoln Mills,* 353 U.S. 448 (1957). The Supreme Court held in that case that a federal district court could grant specific per-

formance of an employer's promise to arbitrate, although the state law of the particular jurisdiction would not compel such relief under an executory agreement. Implicit in that decision is that the role of federal courts is not to settle arbitral matters, but to oversee promises to arbitrate in collective agreements. *Local 95, Office Employes Union v. Nekossa-Edward Paper Co.,* 287 F.2d 452 (7th Cir. 1961); *Radio Corp. of America v. Association of Professional Eng'r Personnel,* 291 F.2d 105 (3d Cir. 1961), *cert. denied,* 368 U.S. 898 (1961). The question then arose whether a federal district court had the power to enjoin the breach of a no strike clause. Gregory, *The Law of the Collective Agreement,* 57 MICH. L. REV. 635 (1959). In the Tenth Circuit, the question was affirmatively answered when that court held the voluntary promise not to strike precluded union reliance on the Norris-LaGuardia Act. *Teamsters Union v. Yellow Transit Freight Lines,* 282 F.2d 345 (10th Cir. 1961), *rev'd per curiam,* 370 U.S. 711 (1962). Several circuits ruled to the contrary, and the Supreme Court resolved the conflict in the principal case.

The declared policy in the Norris-LaGuardia Act is that a worker shall be free from interference and restraint in concerted activities for mutual aid or protection. 29 U.S.C. § 102 (1958). The LMRA declared its purpose is to provide orderly and peaceful procedures for preventing the interference by either employer, worker or union with the legitimate rights of the other. 29 U.S.C. § 141 (b) (1958). The Norris-LaGuardia Act prohibits injunctive relief in cases involving non-violent strikes, picketing, and advising and urging such activities. 29 U.S.C. § 104 (1958). Section 301 (a) of the LMRA provides that a union is amenable to suit in federal court. The issue is whether § 301 (a) prescribes injunctive relief as an orderly procedure to promote the free flow of commerce and prevent interference by a union with the legitimate rights of an employer.

The Norris-LaGuardia Act apparently confers no right on the laboring class by its express provisions, regardless of the language used in the policy statement. Rather it withdraws and limits the power of federal courts to issue injunctions. 29 U.S.C. § 101 (1958). *Marine Cooks & Stewards v. Panama S.S. Co.,* 362 U.S. 365 (1960). An employer has the right to contract, and to have such contractually created rights enforced, but § 301 (a) did not expressly state how such rights were to be enforced in federal courts. Thus, where damages is manifestly an inadequate remedy, is there room for accommodation of the two acts?

The majority of the Supreme Court deemed accommodation a mere play on words, and that it could only decide whether Congress impliedly repealed the Norris-LaGuardia Act. *W. L. Mead Inc. v. Teamster Union,* 217 F.2d 6 (1st Cir. 1954), *appeal dismissed,* 352 U.S. 802 (1955); *A. H. Bull S.S. Co. v. Seafarers' Int'l Union,* 250 F.2d 326 (2d Cir. 1957), *cert. denied,* 355 U.S. 932 (1958). The dissent on the contrary would not enforce the express provisions of the Norris-LaGuardia Act, where it was obviously "not promoting the arbitration process as a substitute for economic warfare." *Local 174, Teamsters Union v. Lucas Flour Co.,* 369 U.S. 95 (1962). Thus, where a union failed to arbitrate a minor dispute as required by the Railway Labor Act, 45 U.S.C. § 152 (1958), a subsequent strike was enjoinable in spite of the Norris-LaGuardia Act. *Brotherhood of R.R. Trainmen v. Chicago River & Ind. R.R.,* 353 U.S. 30 (1957). The majority distinguished this case on the ground that the union action was a clear violation of an affirmative statutory duty.

The majority relied on the fact that the LMRA explicity made the Norris-LaGuardia Act inapplicable in three instances. Two sections permit Government petition for injunctive relief. 29 U.S.C. (§§) 160 (h), 178 (b) (1958). A third permits a private litigant to bring the suit. 29 U.S.C. § 186 (e) (1958). The dissent replied that in the instances above the effect of outright repeal of the Norris-LaGuardia Act was clear, but the effect of permitting the use of the injunction in cases involving collective agreements was not forseeable.

If fedral substantive law is to govern in labor relations, state courts may be prohibited from giving injunctive relief, where a no strike clause has been ignored. The California Supreme Court held that it was not precluded from doing so. *McCarroll v. Los Angeles Dist. Council of Carpenters,* 49 Cal.2d 45, 315 P.2d 322 (1957). However, where the federal courts apply state law in diversity of citizenship cases, differences in federal practice must not so affect the outcome that a contrary result would be reached in a state court. *Guaranty Trust Co. v. York,* 326 U.S. 99 (1945). The outcome determinative test is perhaps fitted for barring state relief. Such a problem will not arise in West Virginia for the Legislature has enacted no statute which authorizes "suits or actions in any form against that class of unincorporated associations known as labor unions." *Milam v. Settle,* 127 W. Va. 271, 32 S.E.2d 269 (1944). In a later case, whether the party sued was a labor union was not decided by the trial court, and the court, therefore, did not meet the issue. *Ohio Valley Advertising Corp. v. Local 207, Sign Painters,* 138 W. Va. 356, 76

S.E.2d 113 (1953). The complaint, however, referred to the party as a union. Rule 4 (d) (9) of the West Virginia Rules of Civil Procedure does provide how process shall be issued against unincorporated associations, but should not be read to alter substantive law. LUGAR & SILVERSTEIN, WEST VIRGINIA RULES 48 (1960).

Perhaps the best summation of what became the majority view was by Judge Wright in a Louisiana district court opinion. "Even if this court read the weathervane as indicating a judicial overruling of the Norris-LaGuardia Act in these situations and thought that solution desirable, it could not presume to ignore the plain mandate of applicable statutes in order to achieve a result in accord with its private views of what the law ought to be." *Baltimore Contractor's Inc. v. Carpenters' Dist. Council,* 188 F. Supp. 382 (E.D. La. 1960). Thus, it seems the only avenue of corrective process is Congress.

James Kilgore Edmundson, Jr.

Torts—A New Test for Proximate Cause?

P, while pushing a stalled automobile, was injured when struck by a passing automobile owned and driven by *D*. In an action for damages brought against only one of the joint tort-feasors, the trial judge instructed the jury that if the conduct on the part of *D* "contributed proximately" to *P's* injuries, they might find in favor of *P* against *D*, unless the jury further believed that *P*, at the time of the accident was not using due care in his own behalf. The jury returned a verdict for *P*. *Held,* affirmed. Although the use of "contributed proximately" in an instruction standing alone may have been somewhat misleading, the verdict of the jury will not be disturbed on its account where the objection was removed by the giving of other instructions consistent with the law. *Metro v. Smith,* 124 S.E.2d 460 (W. Va. 1962).

For the plaintiff to recover in an action for personal injuries, there must be some reasonable connection between the defendant's negligence and the injury sustained. This has been dealt with almost universally by the use of the term "proximate cause". However, at this point the universality ends. The doctrine of proximate cause has developed a chameleon-like quality as a result of which courts have in case after case attempted to clarify its meaning. To illustrate the confusion and uncertainty of the application of this doctrine of proximate cause, the courts have used the "but for" rule, the "nearest